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TO: Wendy Cohen
Sr. Water Resource Control Engineer
Planning and Policy Unit

FROM: Margaret Wong
Water Resource Control Engineer
Planning and Policy Unit

DATE: 26 September 2005

SIGNATURE: Original Signed by Margaret Wong

SUBJECT: IRRIGATED LANDS CONDITIONAL WAIVER PROGRAM, PUBLIC ADVISORY COMMITTEE, 29 AUGUST 2005 MEETING NOTES

Introductory remarks and introduction of those present. Board members left room after introductions.

Irrigated Lands Program Condition Waiver Renewal – Presentation on proposed revisions to Conditional Waiver to be presented as an information report at 15 September 2005 Board meeting (Power Point presentation is posted on website).

- **Question:** What is meant by grower “accountability”?
Response: Even if they belong to a Coalition Group, growers have a responsibility under the Water Code. Many growers do not understand this.
- **Comment:** In all technical committee meetings, there have been discussions of resampling and upstream monitoring but people do not know what to do. Not aware of any discussion about upstream sampling. The AMR review letters sound like the issue is settled but it is not. The water quality numeric limits need to be clarified; anxious to see the table. Problem with electronic data submittal since the lab gives only a hard copy. If you want electronic data submittal, talk to the labs. Concerned with removing program phases. If phases are collapsed, it will increase monitoring costs.
Response: The time line for the renewal will provide opportunities for public feedback. The September Board meeting will have an information report on the revision and there will be a comment period on the renewal documents. There will be workshops where people can ask questions, get information. Goal is to bring an action item to October Board meeting. The existing requirements include resampling and upstream monitoring, but it may not be very clear. Renewal documents will clarify. Electronic data submittal is necessary in order to make it compatible with the Surface Water Ambient Monitoring Program (SWAMP). Removing phases will not double the monitoring cost, but will it make more effective by developing a long-term monitoring strategy.

California Environmental Protection Agency



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- *Comment:* The Central Coast Regional Board's agricultural waiver program specifies SWAMP-compatible electronic data submittal beginning on 30 June 2005. For follow-up monitoring, the Central Coast specifies that not more than 25% of the monitoring budget be spent on follow-up monitoring. Monitoring costs for the Central Coast Ag Waiver have been high due to administration and lab fees. Without the limit on follow-up monitoring, costs could get out of hand quickly.
- *Response:* There are no proposed cut-off or limit on follow-up on monitoring. Staff is trying to make estimates of how much follow-up is needed based on toxicity hit.
- *Question:* On the tributary rule – are you considering beneficial uses and receiving water limitations for constructed agricultural drains?
Response: The Basin Plans specify beneficial uses for some constructed agricultural drains. Agricultural water supply is one beneficial use, but the Basin Plan does not specify beneficial uses for every water body. By 2 September 2005, Regional Board staff plans to send out a response to comments and a revised resolution and proposal.
- *Question:* Are you excluding groundwater recharge as a beneficial use for agricultural drains?
Response: No.
- *Comment:* The tributary rule will be a hot topic. Does municipal beneficial use apply specifically to constructed agricultural drains?
Response: Municipal use applies according to Basin Plan.
- *Question:* Concern regarding not having draft renewal documents available today. Is it possible to have another workshop?
Response: There will be opportunity at the September Board meeting and the comment deadline will be later than that. Still trying to get on the October Board meeting agenda. We will mail to anyone who wants hard copy and can provide CDs. Will be sent to list serve and posted on website. Hope to send package out this week. Waiting for legal and management review. If people feel a need for more discussion in workshops or smaller groups, will be happy to accommodate that.
- *Question:* Will have significant number of changes with little time for review if it is going to the Board for adoption in October. Will changes to original be tracked on the document?
Response: The documents will be clean with no tracking of edits.
- *Question:* Suggest summary table of changes.
Response: Good idea, and staff will provide a cover letter outlining major changes.

Environmental Impact Report Update – The contract has been executed between the Regional Board and Jones and Stokes Associates, and staff held a kickoff meeting on June 29 with JSA and its subcontractors. Data and information are being gathered for the Existing Conditions Report for surface water and groundwater. Existing Conditions Report expected in October. Will have nine workshops for public comment on the report. After the Existing Conditions Report, a draft of a long-term regulatory program will be developed for public review.

Memorandum of Understanding (MOU) with Agricultural Commissioners – MOU was signed 29 June 2005 between Regional Board, State Board, Department of Pesticide Regulations (DPR) and the Agricultural Commissioners of Butte and Glenn Counties. Working on contract scope of work. Expect final agreement on tasks this week and will be moving forward quickly.

Revised Monitoring and Reporting Program Update – On 15 August 2005, the Regional Board's Executive Officer issued Monitoring and Reporting Program No. R5-2005-0833 (MRP) for Coalition Groups enrolled under Resolution No. R5-2003-0105. This MRP rescinded and replaced MRP No. R5-2003-0826, which was adopted by the Regional Board on 11 July 2003. This MRP has been posted on the website as well as sent out on list serve. Major revisions include the submittal of an Exceedance Report within the next business day of when a Coalition Group determines a water quality objective has been exceeded and a requirement to make this determination within five business days of receiving the laboratory analytical report, collection and evaluation of management practices in specific geographic areas only when a water quality objective is exceeded, and submittal of semi-annual monitoring reports by 30 June and 31 December each year. The language for the Communication Report was clarified and tables of analytical methods and quantitative limits were added.

Coalition Group Updates –

San Joaquin County and Delta Water Quality Coalition: On the fifth cycle of monitoring. At least two toxic hits each time with nothing conclusive. Sediment tests in Delta and Contra Costa County influenced by housing development. Moving upstream for sampling. Have fewer members than last year as people read waiver and decided it is not applicable to their operations. Representing about 30,000 acres less than last year; currently updating membership lists.

Sacramento Valley Water Quality Coalition: Another round of monitoring in August; will continue monitoring through October. Doing some sediment toxicity monitoring. Results show no water column toxicity in June or July. One toxicity hit in August; sediment toxicity in June. More sediment testing in September.

Looking at next year's budget. Concerned about possible new requirements. Revised MRPP will be costly. Tough to budget for revisions. Sub-watersheds are working through issues. Will submit Diazinon Management Plan for Sacramento Valley on 31 August. Big step for Coalition Group to try to help manage a regional issue. Membership at 65-70% based on acreage. Got lots of calls after the last 200 Section 13267 letters went out.

East San Joaquin Water Quality Coalition: Sites have been clean so far, with some e coli. Probably due to animal or urban runoff. Membership is down, possibly due to proposed De Minimis Conditional Waiver. De Minimis will undermine the Coalition Groups.

Westlands Water District: Monitoring only during storm season. About 85-90% enrollment based on eligible acres. Interested in De Minimis Conditional Waiver as a Coalition Group.
Southern San Joaquin Water Quality Coalition: Second year of Phase I monitoring. On Kings River Subwatershed, irrigation season may go through October/November. Algae growth rate reductions triggered TIEs and the Coalition Group has filed communication report. Got Annual Monitoring Report (AMR) review letters from the Regional Board for all subwatershed groups except Kings; groups were criticized for not doing things that were added later to MRP.

Additional monitoring sites discussed in initial watershed evaluation report. Concerned about request for membership list. Kern Sub-Watershed interested in De Minimis Conditional Waiver. Want a discussion on fees with State Board. Coalition Group has not made election under any tier of the fee schedule. Fees put Coalition Groups at risk financially. Membership in the Kings and Tule subwatersheds is about 50-55%, but is lower in the Kern Subwatershed – at about 10% – because of the difficulty of defining what is a discharger. Many farmers believe that they are not dischargers and without an accurate definition, Coalition Groups are at a loss how to tell them anything different.

Westside San Joaquin River Watershed: Finished second year of irrigation season monitoring. Top issues: 1) organophosphate (OP) toxicity in water (confirming previous data); have held workshops and planning more with growers, pesticide crop advisers (PCAs), and applicators about problems; and 2) sediment discharges to water (also not new issue). Found herbicide toxicity last fall. Working with TIC on toxicity. E Coli and dissolved oxygen are problems. Membership has been consistent at ~85%. Work through irrigation districts, which get election forms from district customers. Have wetlands discharges and monitor them differently. Coalition Group also has worked through some dialogue with growers regarding effective management practices.

- *Question:* What do farmers think about the workshops? Continue the workshops?
Response: Positive response; the farmers are aware of our [Westside San Joaquin River Watershed] program and have been informed about some label changes. Should talk about toxicity in workshops. Plan to discuss OP pesticides and suspended sediments.
- *Comment:* At these meetings, it is not just giving growers information; it is a dialogue and we learn from them.

Root Creek: Coalition is in a state of flux, not sure if it will remain viable as a Coalition Group. Decision still pending.

Update on Program Compliance – Regional Board staff presented a summary of the latest Section 13267 letters. About 196 letters went to potential growers. Some Coalition Group members received letter but staff cannot avoid this because we do not have the membership lists. Coalition Group members who receive letters must respond. They are requested to send verification document showing they are members (they should get verification letter from Coalition Group).

- *Question:* On first set of Section 13267 letters, some people responded they were not dischargers and Regional Board staff did follow-up. What is the status of this? Did you agree some growers are not dischargers?
Response: The staff inspected sites looking for drainage features and signs of runoff. No definitive conclusion was made that someone is not a discharger, only that there were no signs of discharges at the time of the inspection.
- *Question:* What will the Regional Board do about people who do not respond to Section 13267 letters?
Response: Staff will discuss it with the Executive Officer and the Board's Counsel.
- *Question:* Did staff declare anyone not to be a discharger?

Response: Staff has not declared anyone not to be a discharger.

Comment: Likewise, staff has not declared that anyone is a discharger. It is just as difficult for staff to determine this as it is for growers.

- *Question:* Many other growers will decide they are not dischargers, and they will want staff to determine this through an inspection. Who will arbitrate between staff and growers?

Response: It is more complicated than just sending out an inspector to make a decision. However, growers should not wait for staff to make a determination. Growers should determine if they must participate in the program. The question is, are you a discharger who is eligible to enroll in the waiver, or are you groundwater-only discharger whose only choice to comply with the Water Code is to file a Report of Waste Discharge (RWD) and obtain Waste Discharge Requirements (WDRs)? If there is a threat of discharge to surface waters of the state from any size storm, the grower should join a Coalition Group and get rid of this question of who is a discharger. The question is how to comply with the Water Code. Staff will not begin a massive inspection process.

- *Question:* If growers think they are discharging to groundwater only and they join a Coalition Group, are they in compliance?

Response: If grower takes a pro-active approach through the waiver process to address water quality problems or threats to water quality, we will consider that in discussions with Executive Officer as we move forward.

- *Question:* What is the cost for individual WDRs?

Response: Annual fee is based on threat to water quality and complexity. Annual fees range from \$800 to \$30,000. For an irrigated lands discharger, estimated annual fees range from \$800-\$2,500, plus must submit complete RWD with all the same information as Individual Discharger Conditional Waiver Notice of Intent. Monitoring costs would be the same as Individual Discharger Conditional Waiver.

- *Question:* How do you treat cities – do they join a Coalition Group?

Response: This program deals with runoff from irrigated lands. Most cities do not have this but if they do, they (or the operator) must comply with the Water Code. If discharge is from a treatment system, then need to get a permit through other programs.

- *Question:* How will staff determine stormwater dischargers? You would have to be there to observe a 25, 50 or 100-year storm event.

Response: The object is compliance with the Water Code, not just this program. If a certain grower is determined not to be a surface water discharger, his options to comply with the Water Code are diminished. We cannot go to his field to determine type of discharger.

- *Comment:* Regional Board staff should not contact growers directly. They should contact the Coalition Groups and have them contact the growers. Growers get defensive when they hear directly from the Regional Board staff; detracts from Coalition Group's effectiveness.

Response: Staff are not randomly knocking on doors. When we knock on a door, we do not know who is a Coalition Group member. We can assist the Coalition Groups and growers to comply with the program requirements. It is not the Board against the growers or Coalition Groups. We should all be working together.

Groundwater Discussion –

Regional Board staff provided background information on groundwater options to be presented as an information item at the Regional Board's 15 September meeting. Asked for feedback. Three options were presented: 1) expand the current program during the renewal to include groundwater; 2) establish a conditional waiver for groundwater dischargers with minimal threat to water quality and general WDRs for those with the potential to degrade water quality; and 3) work with other agencies to gather groundwater data and information, and bring an information report to Board in early 2006. Staff report will be available this week on the information report for the September Board meeting.

- *Comment:* Waters of the state includes surface waters and groundwater. Information on groundwater will be presented at the 15 September Regional Board meeting and will be on the list server and posted on the website.
- *Comment:* Proceed with caution. There are too many problems with who is a discharger now. Not everyone without surface discharges is a groundwater discharger. DPR has existing monitoring for groundwater and a groundwater protection program. If you put groundwater into the existing program, it will be too much of a burden.
- *Comment:* There is no widespread water quality problem in groundwater due to agriculture, so there is no need to include it. Groundwater is much more complex – layered aquifers, no continuum between aquifers. Groundwater recharge programs ongoing and have no monitoring requirements. Contaminated aquifers would be improved by agricultural discharges. If groundwater is of low quality, there is no beneficial use. A monitoring program would have to be done strata by strata. It would increase monitoring costs enormously. Definition of “discharger” should not be based on authority to regulate, but on irrigated lands threat to groundwater quality. If you decide to do a waiver for groundwater, do not put it onto the backs of Coalition Groups. Need to deal with groundwater as an independent issue.
- *Comment:* There are groundwater monitoring and protection programs under DPR for pesticides. Some districts have groundwater management plans under AB 3030 and are working under SB 1938. The program structure already exists.
- *Comment:* (Bob Schneider) I want to know the issues and options. Main concern is the EIR, and that is the vehicle to look at this issue. Consider the best way to get information that the Board needs to make a decision. This is an opportunity to have a dialogue on this issue.
- *Comment:* (Al Brizard) The question came up due to Art Bagget's Modesto meeting with food processors and salt issues.
- *Comment:* (Karl Longley) There will be more discussions on salt. Complex issue tied to San Luis Drain. Board will be getting a report on salt at the next Board meeting.
- *Comment:* Hard to get arms around surface water. Adding groundwater would implode entire Coalition Groups process. Suggest we back away from this discussion.
- *Comment:* Regional Board should partner with DPR. Groundwater protection zones are based on leaching factors of the soils, the material used and other factors. Monitoring is already in place. Concern about dry wells used by cities that are not dry. Need to take municipal contribution into account. Work with what is in place already.

- *Comment:* (Mark Rentz, DPR) What information does the Board have and what does it need about groundwater? DPR staff willing to share with Regional Board staff on what we know and do not know about groundwater.

Response: Board asked for options, so staff came up with options. Not recommending any option, but working with other agencies to collect more information. Hope that DPR can come to September Board meeting and provide information about DPR program.

UC Davis Phase II Study Update – Presentation on Phase I and II work. Information on what areas sampled, season in which sampling took place and what toxicity has been observed. Ceriodaphnia toxicity appears to be related to high organophosphate concentrations. Sediment toxicity appears to be related to pyrethroid concentrations. Phase I report, some quarterly reports and UC information is on the Regional Board's website. An update of the Phase II work is being provided in the September program update staff report which will soon be posted on the website.

Annual Monitoring Report Reviews – All reviews have been completed and letters drafted. Some letters are out. The letters address issues of follow-up sampling and timing. Issues are being resolved. Some letters have recommendations for additional monitoring and follow-up.

- *Comment:* Anxious to schedule a follow-up meeting on the AMR letter that we have received. We like the format using a cover letter and staff analysis of what is required immediately and later. The areas of concern we have are related to getting criticized for things that were just agreed upon in the new MRP and did not exist in the old MRP and the request for additional sampling in certain areas. Also concerned about the Regional Board trying to use authority it does not have by requesting membership lists even though there are no water quality exceedances.
- *Question:* What about membership lists?
Response: Existing waiver was changed in 2004 in accordance with State Board Order that did not say lists could be requested only if there are water quality problems.
- *Comment:* I disagree. Membership lists may be requested only if there are known water quality problems.
- *Comment:* State Board Order WQO 2004-003 conclusion states Regional Board should request membership list if a water quality condition exists (on page 17), but the actual order language on page 18 does not have any limitation on when the Regional Board may request the list.
Response: Last Friday (26 August) all Coalition Groups except the California Rice Commission received a letter from Regional Board requesting submittal of membership lists 30 days. Reasons for the letter include: 1) a need to know who is not participating, 2) low participation based on percentages of acreage paying state fees, 3) desire to send 13267 letters only to non-Coalition Group members and not to bother members, and 4) State Board Order allows Regional Board to request the lists with no limitations.
- *Comment:* Letter states the reason for the request is the lack of progress. This is frustrating. We would not be having this discussion if my office had not called just now and told me about the certified letter.
Response: We have talked to Coalition Groups several times in the last 2 ½ weeks about this impending request. There is an accountability issue.

- *Comment:* I thought about this for some time. Did you think about what would be done if we do not respond?
Response: We will evaluate responses and non-responses and discuss it with the Executive Officer. Ultimately if a Coalition Group does not respond, waiver coverage for that group could be pulled.
- *Comment:* We are not water cops.
Response: We are asking for a list of who is a member and whom you have spoken with. This is an accountability issue. This is not asking you to turn people in.
- *Comment:* We are trying to build a group of the agricultural community together, work on problems cooperatively. We are trying to get people in to support the program. This could cause a further division. We are not supposed to make your life easier. Coalition Groups helping Regional Board will become counterproductive.
- *Comments:* May have high participation rate already; should not be based on acreage...There is a Board meeting on Friday [September 2] so I'll discuss it then...Timing was wrong....This is a failure to communicate; we were starting to work together...The level of participation not indicative of how effective a Coalition Group may be...
Response: There is a disparity in numbers between what the Coalition Groups told the State Board for fee calculations and what the Coalition Groups report in these meetings.
- *Comment:* We paid for total acreage, not per member...Agree with others. Cannot give list of non-participants because we do not know who they are.
- *Comment:* State needs to clarify the language between pages 17 and 18 [in the State Board Order].
- *Question:* There may be alternatives to submitting the membership list?
Comment: Staff may need to meet with the Coalition Groups to discuss the letter and alternatives.
- *Question:* Will you rescind the letter?
Response: Staff heard that loud and clear. They will talk to Executive Officer.
- *Comment:* I don't think the Coalition Groups should meet with staff until the letter is rescinded.
- *Comment:* It is a policy decision to send out the letter, not based on authority. The damage is done even if you rescind it.
- *Response:* (Bob Schneider) Thank you for the dignity in your comments.

Irrigated Lands Conditional Waiver Program

Attendance List

29 August 2005

| Name | Organization | E-mail | Phone |
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| Elaine Archibald | California Urban Water Agencies | awconsult@aol.com | (916) 736-3713 |
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| Dennis Bray | Alameda County Agricultural Commissioner | dennis.bray@acgov.org | (510) 670-5232 |
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| Alan Cregan | Central Valley Water Board, Fresno | acregan@waterboards.ca.gov | (559) 445-6185 |
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| Karla Fullerton | Fresno County Farm Bureau | KarlaK@fcb.org | (559) 237-0263 |
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| Betty Galli | Louis Galli Farms | | (209) 836-4046 |
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| Mike Gilton | So. San Joaquin Irrigation District | mgilton@ssjid.com | (209) 249-4618 |
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| Gordon Innes | State Water Board | ginnes@waterboards.ca.gov | (916) 341-5517 |
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| Mark Rentz | Department of Pesticide Regulation | mrentz@cdpr.ca.gov | (916) 324-0614 |
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| John Rivera | City of Modesto | jrivera@modestogov.com | (209) 577-6381 |
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| Rodney Roorda | Farmer | | (209) 559-3029 |
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